EXHIBIT H

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IN THE UNITED STATES DISTRICT COURT 1 2 FOR THE DISTRICT OF HAWAII 3 WAYNE BERRY, a Hawaii citizen,) CV 03-00385 SOM-LEK 4 Plaintiff,) Honolulu, Hawaii) January 20, 2006 5 vs. 2:00 P.M. HAWAII EXPRESS SERVICE, INC., a California corporation,) Motions in Limine 7 et al., 8 Defendants. TRANSCRIPT OF PROCEEDINGS 10 BEFORE THE HONORABLE SUSAN OKI MOLLWAY UNITED STATES DISTRICT JUDGE 11 12 APPEARANCES: TIMOTHY J. HOGAN, ESQ. 13 For the Plaintiff: Lynch Ichida Thompson Kim 14 & Hirota First Hawaiian Tower 1132 Bishop St., Ste. 1405 15 Honolulu, HI 96813 16 ERIC C. LIEBELER, ESQ. For the Defendant Fleming Companies, Inc.: DAMIAN D. CAPOZZOLA, ESQ. 17 Kirkland & Ellis LLP 777 South Figueroa St. 18 Los Angeles, CA 90017 19 For the Defendants LEX R. SMITH, ESQ. Fleming Companies, Inc., THOMAS YEE, ESQ. 20 C&S Wholesale Grocers, Kobayashi Sugita & Goda 21 C&S Acquisitions, First Hawaiian Center 999 Bishop St., Ste. 2600 C&S Logistics: 22 Honolulu, HI 96813 23 For the Defendants LYLE S. HOSODA, ESQ. RAINA P. MEAD, ESQ. Mark Dillon, Brian 345 Queen St., Ste. 804 24 Christensen, Teresa Noa: Honolulu, HI 96813 25

APPEARANCES (Continued): Debra Kekuna Chun, RPR, CRR Official Court Reporter: United States District Court 300 Ala Moana Blvd. Ste. C285 Honolulu, HI 96850 (808) 534-0667 Proceedings recorded by machine shorthand, transcript

produced with computer-aided transcription (CAT).

- 1 reference of the prior jury verdict as willful
- 2 infringement.
- 3 THE COURT: That's correct. That's correct.
- 4 The verdict in Judge King's case can be mentioned but
- 5 without reference to the finding of willful infringement
- 6 in that case.
- 7 MR. HOGAN: Thank you, Your Honor.
- 8 THE COURT: Turning, then, to PCT's motion in
- 9 limine number 5 to exclude or limit the testimony of
- 10 Dr. Philip Johnson.
- 11 Okay. As I understand it, the plaintiff is not
- 12 intending to call Dr. Johnson in the plaintiff's case in
- 13 chief; so the plaintiff doesn't care if I say, "Fine. You
- 14 can't call Dr. Johnson in the case in chief." But the
- 15 plaintiff may want to call Dr. Johnson in the rebuttal
- 16 portion of the case, and I'll worry about whether he can
- 17 come in as a rebuttal witness after I see what the defense
- 18 case in chief is.
- 19 MR. HOGAN: That's fine, Your Honor. I haven't
- 20 changed my mind. I'm not intending to call him in my case
- 21 in chief.
- 22 THE COURT: So it's granted -- the motion is
- 23 granted with respect to the plaintiff's case in chief, and
- 24 the court will reserve with respect to rebuttal because he
- 25 may not even call Dr. Johnson as a rebuttal witness. And,

- 1 you know, I have so many rulings to make today. Why would
- 2 I want to make an unnecessary one?
- 3 MR. LIEBELER: While we're on the subject that
- 4 just brings to mind the notion of the timing of trial. I
- 5 understood the plaintiff has six hours of witness time.
- 6 The defense has collectively six hours of witness time. I
- 7 take it that the plaintiff has to reserve part of that for
- 8 rebuttal, if he chooses to.
- 9 THE COURT: What did I say in my earlier order?
- 10 MR. LIEBELER: Actually, the order says six
- 11 hours each for a total of 10 hours. I'm not sure quite
- 12 how the court got there.
- 13 THE COURT: Did I do that? Okay.
- 14 MR. LIEBELER: Which suggests that the court
- 15 might have been correct earlier on the software issue, as
- 16 much as I hesitate to say that.
- 17 THE COURT: Sorry. Let me see if I can help you
- 18 guys out there.
- 19 Okay. Wait, now.
- MR. LIEBELER: It's on page 37 in the court's
- 21 order. I've got it in front of me, if you'd like me to
- 22 read it.
- 23 THE COURT: Where does it say for a total of 10?
- 24 MR. LIEBELER: Second to the last sentence in
- 25 the full paragraph on 37, Your Honor: "Arguments outside

1	COURT REPORTER'S CERTIFICATE	
2	I, Debra Kekuna Chun, Official Court Reporter,	
3	United States District Court, District of Hawaii, do	
4	hereby certify that the foregoing is a correct transcript	
5	from the record of proceedings in the above-entitled	
6	matter.	
7	DATED at Honolulu, Hawaii, January 21, 2006.	
8		
9	/s/ Debra Chun	
10	DEBRA KEKUNA CHUN	
11	RPR, CRR	
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